Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number:
DA/00085/2014

THE IMMIGRATION ACTS

Heard at: Manchester	**Decision Promulgated**
On 20th July 2016	**On 26th July 2016**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

XT
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant:	Ms K Smith, Counsel of Garden Court North instructed by Direct Access
For the Respondent:	Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Respondent is a national of Zimbabwe born in 1981. He is subject to a Deportation Order and as such would not ordinarily benefit from an order for anonymity. This case does however involve minor children and having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I consider it appropriate to make an order in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these

> proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

2. In this determination I re-make the decision in the Appellant's appeal against the Respondent's refusal to revoke a Deportation Order. The decision was served on the Appellant on the 23rd December 2013. The Appellant appealed to the First-tier Tribunal and in a decision dated 23rd September 2014 the appeal was allowed by Judge Mulvenna. The Secretary of State appealed to the Upper Tribunal and in a written decision dated 23rd December 2015 a panel of the Upper Tribunal (UTJJ Martin and Bruce) found legal error in the determination such that it had to be set aside. A copy of that 'error of law' decision is attached.

3. In the remaking the Appellant was ably assisted by Ms Smith of Counsel, who prepared the case without assistance from any instructing solicitors after the Appellant was left without representation when the firm originally instructed closed down. Her involvement was of great assistance to the Tribunal and I am grateful to her and Mr Harrison for their well-made and succinct submissions.

Factual Background and Legal Framework

4. The Appellant arrived in the UK on the 8th June 2007 and attempted to enter the country using a South African passport and claiming to be a musician on tour. When enquiries revealed that he had twice been refused a visa for the UK he was refused leave to enter. He then admitted that he was Zimbabwean and claimed asylum. He was prosecuted in respect of using an improperly obtained identity document and on the 18th June 2007 was sentenced to 12 months imprisonment at Manchester Crown Court. On the 2nd August 2007 the Secretary of State served a notice of intention to deport and the Appellant was detained. He pursued his appeal and in May 2008 was granted bail. On the 10th September 2008 the asylum claim was rejected. The First-tier Tribunal dismissed the appeal on all grounds and the Respondent became 'appeal rights exhausted' on the 3rd November 2008. On the 23rd December 2008 the Appellant made an application for his deportation order to be revoked. That application was refused on the 28th November 2011, but the decision was not properly served because the Appellant had moved house and had not informed the Home Office. He was apprehended re-entering the UK mainland from Ireland in May 2013 and placed in detention. The decision to revoke that is now subject to challenge was not properly served until the 23rd December 2013.

5. At the time of the original deportation appeal in September 2008 the Appellant had sought to resist removal on asylum grounds. He advanced a claim for asylum which was rejected by a panel of the First-tier Tribunal (Immigration Judge McAll and lay member Mrs S. Hewitt). The panel did not consider Article 8 since the Appellant did not at that time raise it as a ground of appeal. The parties agree that the 2008 determination is therefore of limited value to my decision. Applying the *Devaseelan* principles I note that the matters before me have all arisen since that decision in 2008 and are therefore new matters that may be considered afresh. Insofar as it might be relevant I am obliged to take account of the generally negative credibility findings made in respect of the Appellant.

6. The case advanced before me now rests squarely on Article 8. The Appellant has what he claims to be a genuine and subsisting paternal relationship with a British child, B, who was born in April 2009. Although B's mother and the Appellant are no longer together, she is currently pregnant with their second child. I am told it is a little girl, due in September 2016. DNA has been produced so that the Respondent is satisfied that the Appellant is the father of B.

7. In respect of the applicable legal framework, the relevant Rules are to be found in Part 13. Paragraph A362 makes it clear that the "new rules" apply to *all* Article 8 claims raised in respect of a deportation matter, even if the Order itself was made before those Rules were in force:

> A362. Where Article 8 is raised in the context of deportation under Part 13 of these Rules, the claim under Article 8 will only succeed where the requirements of these rules as at 28 July 2014 are met, regardless of when the notice of intention to deport or the deportation order, as appropriate, was served.

   The point is underlined at paragraph A398(b) which makes clear that applications for revocation will also be considered in light of the "new rules", that is to say the framework for consideration of deportation set out at paragraphs 398-399A, found in MF (Nigeria) v SSHD [2013] EWCA Civ 1192 to constitute a "complete code" for the consideration of Article 8 and deportation.

8. The provisions relating to revocation are at paragraphs 390-391A:

> 390. An application for revocation of a deportation order will be considered in the light of all the circumstances including the following:
>
> (i) the grounds on which the order was made;
>
> (ii) any representations made in support of revocation;
>
> (iii) the interests of the community, including the maintenance of an effective immigration control;

(iv) the interests of the applicant, including any compassionate circumstances.

390A. Where paragraph 398 applies the Secretary of State will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in maintaining the deportation order will be outweighed by other factors.

391. In the case of a person who has been deported following conviction for a criminal offence, the continuation of a deportation order against that person will be the proper course:

(a) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of less than 4 years, unless 10 years have elapsed since the making of the deportation order when, if an application for revocation is received, consideration will be given on a case by case basis to whether the deportation order should be maintained, or

(b) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of at least 4 years, at any time,

Unless, in either case, the continuation would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees, or there are other exceptional circumstances that mean the continuation is outweighed by compelling factors.

391A. In other cases, revocation of the order will not normally be authorised unless the situation has been materially altered, either by a change of circumstances since the order was made, or by fresh information coming to light which was not before the appellate authorities or the Secretary of State. The passage of time since the person was deported may also in itself amount to such a change of circumstances as to warrant revocation of the order

9. The relevant parts of paragraphs 398 and 399 are here highlighted in bold:

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or

(c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they

> are a persistent offender who shows a particular disregard for the law, the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.
>
> 399. This paragraph applies where paragraph 398 **(b)** or (c) applies if –
>
> **(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and**
>
> **(i) the child is a British Citizen; or**
>
> (ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case
>
> **(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and**
>
> **(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported**; or

10. The question before me is therefore whether the situation has changed since the decision to deport the Appellant was upheld in 2008. It being accepted that a sentence of 12 months imprisonment brings the Appellant within paragraph 398(b), the question is whether he can bring himself within the exception at 399(a)(i). It is for the Appellant to demonstrate that it would be unduly harsh for his British son to have to live in Zimbabwe, *and* that it would be unduly harsh for his British son to live without him here.

11. The meaning of the term “unduly harsh” has recently been considered by the Court of Appeal in MM (Uganda) & Anor v SSHD [2016] EWCA Civ 450. The Court favoured the approach taken in KMO v SSHD (section 117 – unduly harsh) [2015] UKUT 00543 (IAC), that is to say that the term “unduly” invites a proportionality balancing exercise into the Rule. The removal of a parent will very often be harsh for a child, whether it is unduly so will depend on a combination of factors, not limited to the impact on the individual. The whole scheme of Part V of the Nationality, Immigration and Asylum Act 2002 invites the decision maker to weigh in the public interest:

> 22. I turn to the interpretation of the phrase "unduly harsh". Plainly it means the same in section 117C(5) as in Rule 399. "Unduly harsh" is an ordinary English expression. As so often, its meaning is coloured by its context. Authority is hardly needed for such a proposition but is anyway provided, for example by VIA Rail Canada [2000] 193 DLR (4th) 357 at paragraphs 35 to 37.

> 23. The context in these cases invites emphasis on two factors, (1) the public interest in the removal of foreign criminals and (2) the need for a proportionate assessment of any interference with Article 8 rights. In my judgment, with respect, the approach of the Upper Tribunal in MAB ignores this combination of factors. The first of them, the public interest in the removal of foreign criminals, is expressly vouched by Parliament in section 117C(1). Section 117C(2) then provides (I repeat the provision for convenience):
>
> "The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal."
>
> 24. This steers the tribunals and the court towards a proportionate assessment of the criminal's deportation in any given case. Accordingly the more pressing the public interest in his removal, the harder it will be to show that the effect on his child or partner will be unduly harsh. Any other approach in my judgment dislocates the "unduly harsh" provisions from their context. It would mean that the question of undue hardship would be decided wholly without regard to the force of the public interest in deportation in the particular case. But in that case the term "unduly" is mistaken for "excessive" which imports a different idea. What is due or undue depends on all the circumstances, not merely the impact on the child or partner in the given case. In the present context relevant circumstances certainly include the criminal's immigration and criminal history.

12. Against that background and legal framework, I consider the facts relied upon by the appellant.

The Evidence

13. The Appellant relied on his witness statement. He explains that in approximately June 2008 he entered into a relationship with P. She was then a South African national with indefinite leave to remain. B was born in April 2009. The Appellant has had regular contact with him since he was born. In 2011 the Appellant moved in with P and B and his caring responsibilities increased substantially. P was required for her work to “live-in” which meant that she was away from home for up to two weeks at a time (I took this to mean that she was employed as a carer) and during these periods the Appellant was B’s primary carer. The situation remained like this until May 2013 when the Appellant was detained. Once he was released he resumed living with P and B. he describes his day-to-day routine with his son as follows:

> “I would wash and iron his school uniform, bath him and cook for him. I would put him to bed, reading him a story. I would take him to school and pick him up every day. I would take him to football practice. I was a hands-on Dad and we enjoy a close relationship”.

14. The Appellant and P split up in March 2016. He states that she was placed under intolerable strain by having to work long hours as he did not have permission to work. The split was not amicable.

15. The Appellant sought confirmation of his contact rights with B from

the Family Court. On the 7th July 2016 Judge Hoath sitting at the Family Court in Oldham heard evidence from the Appellant, from P, and from a CAFCASS officer. It was noted that the parties had been conducted contact but required formalisation of those arrangements. Judge Hoath ordered, by consent, that B is to live with his mother. She must make sure that he spends each Monday evening with his father (from 5pm to 8pm) and the same period on one other evening each week to be arranged. Every second weekend B will be collected from school on Friday afternoon and will spend the whole weekend with his father, being returned to his mother by 6pm on Sunday. There shall be further contact such that the parties can agree between themselves. B and the Appellant are to spend a minimum of two hours with each other on their respective birthdays.

16. The Appellant further relies upon a letter dated 20th January 2016 from Saint Hugh's Primary School in Oldham. The Headteacher Mrs S. Taylor writes to confirm that the Appellant collects B on a daily basis. He shows an "avid interest" in his son's education, attending parents' evenings, plays, concerts and church festivals. He also supports fundraising activities. A letter is also supplied from Moston Junior Football Club. It is undated and is from Mr Paul Mitchell who states that he is the Chairman and Head Coach. He confirms that B is an amiable boy who is brought to practice by his Dad.

17. In respect of the Appellant's criminal conviction it is accepted that he was convicted for use of a false instrument in June 2007. He was sentenced to 12 months in prison. It is accepted that he has not been convicted of any criminal offence since then. The Appellant avers that he has not committed any offences not been in any trouble with the police. I have no evidence to contradict that.

My Findings

18. The Appellant is a foreign criminal and his deportation is in the public interest. He received a sentence of 12 months in prison. He sought to enter the United Kingdom using a passport to which he was not entitled and sought to pass himself off as a South African national. The use of false documents to circumvent immigration control is a serious criminal offence and it has wide ramifications for society and the public purse. The Deportation Order was signed on the 11th December 2007. The Appellant's appeal against that decision was dismissed.

19. The Appellant now seeks revocation of that Order on the grounds that his circumstances have changed. He now has an Article 8 life in the UK and he submits that interference with it would be a disproportionate response.

20. The exception the Appellant relies upon is paragraph 399 (a):

> 399. This paragraph applies where paragraph 398 **(b)** or (c) applies if –
>
> **(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and**
>
> **(i) the child is a British Citizen; or**
>
> (ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case
>
> **(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and**
>
> **(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported**; or

21. I find as fact that the Appellant has a genuine and subsisting parental relationship with B. One need look no further than the generous contact order awarded by the Family Court for evidence of that. That order was made by a specialist court which had the benefit of evidence from P, the Appellant and a CAFCASS officer. If further evidence were needed, then it comes from Mrs Taylor who confirms that the Appellant has had a substantial involvement in his son's school life since he started there.

22. It is not in issue that B is under 18, that he is in the UK and that he is British.

23. It has never been the Secretary of State's case that B could go and live in Zimbabwe. For the avoidance of doubt I find that it would be unduly harsh for him to do so, given that he is currently resident with his British mother who has no intention of moving. The child would be preserving his relationship with one parent at the expense of losing that with another.

24. I find as fact that it would be unduly harsh for B to remain in the UK without his father. My starting point is the offending behaviour of the Appellant. He committed a serious criminal offence. Having done that he remained in the UK for a number of years without permission to do so. These are factors which weigh heavily in the balance. The weight attached to them is not however monolithic. As the Court of Appeal in MM (Uganda) makes clear, the more serious the offence and the greater the public interest in removal, the more difficult it will be to show that removal would be unduly harsh. If that is so, then the converse must be true. The less serious the offending behaviour, and the less pressing the public interest, the easier it will be to show that

removal would have an unduly harsh impact. In this case the Appellant has undeniably committed a serious offence which would ordinarily merit deportation, but it is plain from the structure of paragraph 398 that it is at the lower end of the spectrum as far as offences which will result in deportation go, attracting as it did a sentence of 12 months. It was a single offence, and there is no indication of any propensity to reoffend, since the Appellant has received no convictions since.

25. With those factors in mind I weigh the impact on B. B has grown up with both of his parents around and has had the benefit of a caring father who has played a significant role in his life. The Appellant has not been, as Ms Smith puts it, an absentee father. He has been in his son's life since he was born, and has continued to be so. Although I have, in light of the view taken by the 2008 Tribunal, viewed the Appellant's own evidence with some circumspection, his evidence about his relationship with B is supported by all of the other evidence: the confirmation from school that he plays a significant role, that he takes him extracurricular activities such as football and of course the order of a specialist court. I do not doubt that B has a strong attachment to his father. Add to this the fact that B has very recently been through the difficult life event of his parents splitting up, and that he will imminently be the eldest child in a single parent family where his mother will be caring for a newborn on her own. Common sense would indicate that it is important for B to have his father in his life, not on the end of a telephone, but in the real and present sense of having him pick him up after school, take him to football, help him with homework and all the other things that a father should do. This deportation would mean an effective severance of the relationship that they have now. It would seem to be extremely unlikely that P would be willing to take B for visits to Zimbabwe. I consider that the impact on B would be severe and that weighed against the Appellant's offending behaviour – including his period of overstaying – it would in all the circumstances be unduly harsh for B if his father is deported.

26. There is one other factor that I have not considered which falls outwith the scope of 399(a)(i). That is that P is currently pregnant with the Appellant's second child. In view of his commitment to B there is no reason to doubt that he will be as committed the second time around. Ms Smith indicated that her instructions were that the Appellant was advised by Judge Hoath to return to court shortly before birth to work out an arrangement so that he can have contact upon the child's birth. Although I have not been called upon, in the structure of the provisions at 398-399 to consider this factor, it is one that might properly be categorised as "exceptional".

Decisions

27. The determination of the First-tier Tribunal contained an error of law and it is set aside.

28. The appeal is allowed under the Immigration Rules.

29. In order to protect the identity of the child involved there is an order for anonymity.

Upper Tribunal Judge Bruce
21st July
2016

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number:
DA/00085/14

THE IMMIGRATION ACTS

Heard at: Manchester
On: 11th December 2015

Decision Promulgated

.....

Before

UPPER TRIBUNAL JUDGE MARTIN
UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

XT
(anonymity direction made)

Respondent

For the Appellant: Mr Harrison, Senior Home Office Presenting Officer
For the Respondent: Ms Smith, Counsel instructed by Adamsons Law Solicitors

DECISION ON 'ERROR OF LAW'
DECISION TO ADJOURN

30. The Respondent is a national of Zimbabwe date of birth [ ] 1981. On the 14th September 2014 the First-tier Tribunal (Judge Mulvenna) allowed his appeal against a decision to deport him from the United Kingdom. The Secretary of State for the Home Department now has permission[1] to appeal against that decision.

31. The Respondent arrived in the UK on the 8th June 2007 and attempted to enter the country using a South African passport and claiming to be a musician on tour. When enquiries revealed that he had twice been refused a visa for the UK he was refused leave to enter. He then admitted that he was Zimbabwean and claimed asylum. He was prosecuted in respect of using an improperly obtained identity document and on the 18th June 2007 was sentenced to 12 months imprisonment at Manchester Crown Court. On the 2nd August 2007 the Secretary of State served a notice of intention to deport and the Respondent was detained. He pursued his appeal and in May 2008 was granted bail. On the 10th September 2008 the asylum claim was rejected. The First-tier Tribunal dismissed the appeal on all grounds and the Respondent became 'appeal rights exhausted' on the 3rd November 2008. On the 23rd December 2008 the Respondent made an application for his deportation order to be revoked. It was the refusal of that request, on the 28th November 2011, that was subject to challenge before Judge Mulvenna.

32. The Respondent's case before the First-tier Tribunal was that his deportation would be a disproportionate interference with his Article 8 rights. Since his arrival in the UK he had formed a relationship with a South African national with indefinite leave to remain in the UK and together they had a child, born on the 11th April 2009. The Tribunal found there to be insufficient evidence to demonstrate that the Respondent was in a subsisting relationship with this claimed partner but went on to examine his parental relationship with his child. The evidence here was similarly lacking. The Respondent claimed that the child's mother was away working for substantial periods of time and that he was then the primary carer; he claimed that he collected his

[1] Permission was granted by First-tier Tribunal Judge Bird on the 13th October 2014

child from school on a regular basis. There was scant evidence to support either claim, leading the Tribunal to conclude, at paragraph 33: "there is no sustainable evidence that the child's mother could not provide care without undue hardship". Between paragraphs 34 and 36 the Tribunal appears to accept that the biological relationship gives rise to an Article 8 family life and that there is "some, albeit limited, interaction and engagement between them".

33. Having made these findings the First-tier Tribunal goes on to direct itself to various authorities on the proper approach to Article 8, including MF (Nigeria) [2013] EWCA Civ 1192, Razgar [2004] UKHL 27 and Huang [2007] UKHL 11. The Tribunal concludes that having regard to the facts "there is no compelling evidence that the public interest would be served" by deportation. Central to that reasoning was a finding that the criminal conviction, although it involved dishonesty, did not expose the public to any risk. There was no evidence that there was any risk of reoffending or that the Respondent had a "deep-seated criminal outlook". This was balanced against his family life as follows [at 56]:

> "On the other hand, the appellant's son would suffer significantly from removal of the appellant. They would lose the vital contact which is needed to discharge parental responsibility at a time of the child's life (the commencement of education) when the stability of home life is of paramount importance. The interests of the child in the appellant remaining in the United Kingdom, which is the only practical way in which family life with the appellant might be maintained, far outweigh those of the respondent in securing the appellant's removal. I conclude that the respondent's decision was disproportionate. The appellant's Article 8 rights and those of his child would be breached if the appellant were to be removed. There are circumstances which are sufficiently compelling (and therefore exceptional), namely the need to safeguard and promote the child's welfare and not to put him at risk, to outweigh the public interest in removal".

34. The appeal was thereby allowed.

Error of Law

35. The grounds of appeal are detailed and lengthy but in essence the Secretary of State submits that the First-tier Tribunal erred in the following material respects:

a) In failing to give reasons for the finding that there are

'exceptional circumstances' in this case;

b) In failing to give due weight to the strong public interest in deporting foreign criminals;

c) In failing to make findings on material matters.

36. In response Ms Smith was instructed to defend the decision on the grounds that the reasoning could be upheld even in the absence of any reference to the relevant immigration rules.

37. We have no hesitation in finding that this decision must be set aside. Although the determination contains a good deal of law it unfortunately omits to set out the most pertinent part of the legal framework in this appeal, namely paragraphs A398, 398, 399 and 399A of the Immigration Rules. Although the determination makes oblique reference to the "exceptions" set out in these provisions, the failure to refer directly to the Rules meant that the Tribunal subsequently fell into error in its assessment of the residual Article 8 claim.

38. The proper approach should have been to first consider whether the Respondent could discharge the burden of proof in respect of any of the exceptions at paragraphs 399 and 399A. In relation to his child, paragraph 399(a) required clear findings on whether it would be unduly harsh to expect the child to live without his father in the UK, *and* whether it would be unduly harsh to expect the child to travel to Zimbabwe. If these tests could not be met the appeal could only be allowed if the evidence established "very compelling circumstances over and above" those matters identified in the Rules. In applying that test the Tribunal would need to remind itself that the weight to be given to public interest is likely to be substantial, having regard to the fact that the Rules as they relate to deportation are to be regarded as a complete code: see MF (Nigeria) [2013] EWCA Civ 1192.

39. In this case the Tribunal failed to make clear findings in respect of 399(a) and did not consider at all whether the "compelling (and therefore exceptional) circumstances" mentioned at paragraph 56 could be said to be "over and above" those matters set out in the Rules. In fact paragraph 56 fails to explain at all or in what respect the circumstances in this case could be termed exceptional. The reasoning on proportionality cannot therefore be upheld.

40. We are further satisfied that the Tribunal erred in law in finding that there was "no" public interest in removal. The weight to be attached to the public interest is not monolithic; it is incumbent upon Tribunals to gauge the weight to be attached to it with reference to matters such as the nature of the criminality, the propensity to reoffend and

the degree of rehabilitation. There was however no basis for the finding that there was "no" public interest in deporting this individual, who had been convicted of a criminal offence attracting a sentence of 12 months' imprisonment. We further note that the Tribunal here fails to have regard to the fact that the Respondent has never had any leave to be in the United Kingdom, and that subsequent to his conviction and failed appeals he absconded from immigration control, only coming back into contact with the authorities when apprehended trying to re-enter the mainland from Belfast on the 27th May 2008.

41. For these reasons the determination is set aside in its entirety.

Decision to Adjourn

42. Before us Ms Smith requested that the re-making of this appeal be adjourned to enable up to date evidence about the Respondent's relationship with his child to be produced. Mr Harrison had no objection to this. Given that over a year has passed since the hearing, and in view of the age of the child, we agreed that it would be in the interests of justice to adjourn the remaking.

Decisions

43. The decision of the First-tier Tribunal is set aside.

44. The decision in the appeal will be re-made by the Upper Tribunal at a date to be notified.

45. The First-tier Tribunal made an order for anonymity because the identification of the Respondent may lead to the identification of his child. In the absence of any submissions to the contrary we continue that order.

Upper Tribunal Judge Bruce